



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 17, 51, 52, and 59

RIN 2900-AO90

Update to NFPA Standards, Incorporation by Reference

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations incorporating by reference the National Fire Protection Association (NFPA) codes and standards. These codes and standards are referenced in VA regulations concerning community residential care facilities, contract facilities for certain outpatient and residential services, Medical Foster Homes, and State home facilities. To ensure the continued safety of veterans in these facilities, VA is continuing to rely upon NFPA codes and standards for VA approval of such facilities. This rulemaking updates our regulations to adhere to more recent NFPA codes and standards.

DATES: This regulation is effective [insert date 30 days after date of publication in the Federal Register]. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: David Klein, Fire Protection Engineer, (10NA8), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 632–7888. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on July 15, 2014, VA proposed to amend its regulations concerning the incorporation by reference of the National Fire Protection Association (NFPA) codes and standards applicable to community residential care facilities, contract facilities for outpatient and residential treatment services for veterans with alcohol or drug dependence or abuse disabilities, Medical Foster Homes, and State home facilities. 79 FR 41153. We stated in the proposed rule that VA's regulations that govern these facilities require that these facilities meet certain provisions of the codes and standards published by NFPA. These codes and standards are reviewed and updated by NFPA on a 3-year cycle. We also stated that 38 CFR 17.1 is the regulation where VA incorporates by reference the NFPA codes and standards cited in §§ 17.63, 17.74, 17.81, and 17.82. The NFPA codes and standards are also referenced in §§ 51.200, 52.200, and 59.130. VA relies on the NFPA codes and standards in order to provide consistency across the country. By adopting the most current editions of these codes and standards, VA works to ensure that veterans reside and receive care in facilities that are safe while ensuring that these facilities maintain high levels of safety by following one set of codes and standards for the design, renovation, and inspection for community facilities used or approved by VA.

This rulemaking amends § 17.1 to reflect the current edition of NFPA 101, Life Safety Code, and the editions of the NFPA codes and standards that are cited in Chapter 2 of NFPA 101. This rulemaking also amends §§ 51.200, 52.200, and 59.130 to reflect the current editions of NFPA 101, Life Safety Code, and NFPA 99, Health Care Facilities Code. The NFPA codes and standards that have been updated since we published current § 17.1 are NFPA 101, Life Safety Code (2009 edition); NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2008 edition); NFPA 30, Flammable and Combustible Liquids Code (2008 edition); and NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2009 edition). The NFPA codes and standards updated from the editions referenced in current §§ 51.200 and 59.130 are NFPA 101 (2009 edition) and NFPA 99, Standard for Health Care Facilities (2005). NFPA codes and standards updated from the edition referenced in current § 52.200 is NFPA 101, Life Safety Code (2000 edition). This final rulemaking updates the references to these NFPA codes and standards in the cited VA regulations to reflect the most recent editions cited in NFPA 101, Life Safety Code (2012 edition). We are also updating cited references within VA regulations to be consistent with the current NFPA codes and standards. In some cases, reorganization of material in the NFPA codes and standards, without change in substance, has affected the citation within VA regulations, and we are making minor amendments to reflect these changes.

We provided a 60-day comment period, which ended on September 15, 2014. We received one comment on the proposed rule. The commenter supported the

proposed rule, but indicated that the 2015 Edition of NFPA 101 became available on September 11, 2014. The commenter suggested that in addition to the changes in the proposed rule, VA adopt the 2015 standards as well. We agree with the commenter, however, prior to adopting the new standards, VA will issue a proposed rulemaking and allow the public to comment on the NFPA 101 standards for 2015 before these changes can become final. VA will address the suggestion in a future rulemaking.

This final rule is reorganizing § 17.1 by placing the NFPA standards in numerical order. These edits to § 17.1 are technical only. We are not making any edits to the content of § 17.1, other than those already stated in the proposed rulemaking. We are also amending §§ 51.200 and 59.130 by removing the incorporation by reference language from the individual paragraphs where the NFPA codes are referenced and adding a new paragraph that will incorporate by reference all of the NFPA codes currently referenced in each paragraph. The new paragraph in §§ 51.200 and 59.130 adds clarity to each section but does not alter the content. This merely is a technical change.

In the proposed rulemaking, we stated that we would be adding a new paragraph (c) to § 17.1. This subparagraph was intended to permit fire and safety specialists to determine when upgrades to existing facilities are necessary on a case-by-case basis. The proposed paragraph was intended as an exception to the NFPA codes and standards for Medical Foster Homes. Upon further consideration, we are not going to adopt the new paragraph (c) in § 17.1 because this regulation merely

establishes the incorporation by reference of NFPA standards and does not address the enforcement of such standards. The proposed paragraph (c) would have essentially acted as an exception to the NFPA standards, however, this exception is already present in the sections of the NFPA standards that are incorporated by reference in § 17.1. Specifically, the exception that was proposed in paragraph (c) is covered for community residential care facilities, contract facilities for certain outpatient and residential services, and State home facilities through NFPA 101 Chapter 2. The Medical Foster Homes, however, are unique in that they do not fall into any specific occupancy category within NFPA 101 and thus to ensure that the exception will also apply to Medical Foster Homes, we are incorporating the proposed language in § 17.1(c) into current § 17.74(a)(3), which specifically relates to Medical Foster Home owners. The provisions added to § 17.74(a)(3) excepts Medical Foster Home owners from the blanket requirement of having to modify existing fire protection systems to meet the updated installation standards and instead permits fire and safety specialists to determine when upgrades to existing facilities are necessary on a case-by-case basis. This exception will only apply to existing Medical Foster Homes. New homes to the program will be required to meet the updated editions of the fire protection system installation standards. We believe that the non-adoption of the proposed paragraph (c) of § 17.1 and the inclusion of the language in proposed § 17.1(c) in § 17.74(a)(3) is non-substantive and a logical outgrowth of the proposed rulemaking.

We have revised § 51.200(a) by removing the exception for the application of NFPA 101 (2009 edition) for paragraph 19.3.5.1. This exception was added to delay

the enforcement of paragraph 19.3.5.1 until August 13, 2013. Since this date has passed and State homes were on notice that the exception would expire on this date, we are making a technical change to remove the outdated language.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with the changes stated in the Supplementary Information of this rulemaking.

Approval of Incorporations by Reference

This rulemaking updates the references to the NFPA codes and standards in the cited VA regulations. NFPA 101, Life Safety Code, is the primary source document that establishes the safety requirements for newly constructed and existing facilities. NFPA 101 is unique in that it provides a different set of requirements for the same type of facility based on whether the facility is to be newly constructed or already exists. The provisions of NFPA 25 and 720 used in VA's regulations are generally relied on to establish the requirements for the inspection, testing, and maintenance of already installed existing systems, and the majority of the changes in the updated editions are relatively minor with respect to inspection, testing, and maintenance. We believe that compliance with these minor revisions would not be difficult for the affected facilities. This rulemaking updates NFPA 25 to the 2011 edition and updates NFPA 720 to the 2012 edition. The 2012 edition of NFPA 99, Health Care Facilities Code, revises the fire safety standards to provide for safety standards that are based on the risk of a critical condition and remain relatively unchanged from the previous edition. The standard for

NFPA 30, Flammable and Combustible Liquids Code, has not changed; however, the paragraph that contains the definition of safety can has changed in the 2012 edition. We are removing the citation to the specific paragraph and merely referencing the standard to avoid future minor reorganizational changes made by NFPA. The materials for which we are seeking incorporation by reference are available for inspection at the ANSI Incorporation by Reference (IBR) Portal, <http://ibr.ansi.org>. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule updates current fire safety standards and will not require more than a modest capital investment on the part of affected entities. The changes to § 17.1 will likely affect between 50 and 100 of the 1,293 community residential care facilities approved for referral of veterans under the regulations. Medical Foster Homes are small entities, providing between 1 and 3 resident beds to veterans in each Medical Foster Home. The changes to § 17.74 will likely affect fewer than 10 of the 561 Medical Foster Homes approved by VA for referral under the regulations. Any additional costs for compliance with the final rule incurred by either community residential care facilities or Medical Foster Homes will constitute an inconsequential amount of the operational costs of such facilities.

Where modification is anticipated, such as adding heat detection to unused attic space, the impact is minimal because the costs to comply with the new requirements range from \$100.00 to \$500.00 dollars, which includes labor costs. In many cases, the adoption of the current NFPA codes and standards provides options that are less restrictive than the prior NFPA codes and standards. The changes to §§ 17.81 and 17.82 will affect only small entities; however, most, if not all, of these entities are already in compliance with the current NFPA codes and, therefore, should not be significantly impacted by this rule. The changes to parts 51, 52, and 59 will affect State homes. The State homes that will be subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed

by State governments except for a small number operated by entities under contract with State governments. These contractors are not small entities. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB) unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 Through Fiscal Year to Date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on July 20, 2015, for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 51

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Incorporation by reference, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 52

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Incorporation by reference, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 59

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: July 22, 2015.

William F. Russo,
Acting Director,
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 17, 51, 52, and 59 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

2. Revise § 17.1 to read as follows:

§ 17.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce an edition of a publication other than that specified in this section, VA will provide notice of the change in a rule in the Federal Register and the material will be made available to the public. All approved materials are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, call 202-461-4902, or at the National Archives and Records Administration (NARA). For information on the availability of approved materials at NARA, call (202) 741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555).

(1) NFPA 10, Standard for Portable Fire Extinguishers (2010 edition),
Incorporation by Reference (IBR) approved for §§ 17.63, 17.74, and 17.81.

(2) NFPA 13, Standard for the Installation of Sprinkler Systems (2010 edition),
IBR approved for § 17.74.

(3) NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and
Two-Family Dwellings and Manufactured Homes (2010 edition), IBR approved for
§ 17.74.

(4) NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential
Occupancies Up To and Including Four Stories in Height (2010 edition), IBR approved
for § 17.74.

(5) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-
Based Fire Protection Systems (2011 edition), IBR approved for § 17.74.

(6) NFPA 30, Flammable and Combustible Liquids Code (2012 edition), IBR
approved for § 17.74.

(7) NFPA 72, National Fire Alarm and Signaling Code (2010 edition), IBR
approved for § 17.74.

(8) NFPA 101, Life Safety Code (2012 edition), IBR approved for §§ 17.63,
17.74 (chapters 1 through 11, 24, and section 33.7), 17.81, and 17.82.

(9) NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition),
IBR approved for § 17.63.

(10) NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection
and Warning Equipment (2012 edition), IBR approved for § 17.74.

(Authority: 5 U.S.C. 552(a), 38 U.S.C. 501, 1721.)

3. Amend § 17.74 as follows:

a. By revising paragraph (a)(3).

b. In paragraph (g)(1), by removing “sections 24.3.4.1 or 24.3.4.2 of NFPA 101 (incorporated by reference, see § 17.1); section 24.3.4.3 of NFPA 101” and adding in its place “sections 24.3.4.1.1 or 24.3.4.1.2 of NFPA 101 (incorporated by reference, see § 17.1); section 24.3.4.1.3 of NFPA 101”.

c. In paragraph (o)(2), by removing “section 3.3.44 of”.

The revision reads as follows:

§ 17.74 Standards applicable to medical foster homes.

(a)* * *

(3) Except as otherwise provided in this section, meet the applicable provisions of chapters 1 through 11 and 24, and section 33.7 of NFPA 101 (incorporated by reference, see § 17.1), and the other codes and chapters identified in this section, as applicable. Existing buildings or installations that do not comply with the installation provisions of the codes or standards referenced in paragraph (b)(1) through (5), (b)(8), and (b)(10) of § 17.1 shall be permitted to be continued in service, provided that the lack of conformity with these codes and standards does not present a serious hazard to the occupants.

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PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

4. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

5. Amend § 51.200 by revising paragraphs (a) and (b) and adding paragraph (i) to read as follows:

§ 51.200 Physical environment.

* * * * *

(a) Life safety from fire. The facility must meet the applicable provisions of NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

(b) Emergency power. (1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.

(2) The system must be the appropriate type essential electrical system in accordance with the applicable provisions of NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Health Care Facilities Code.

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources in accordance with NFPA 101, Life Safety Code and NFPA 99, Health Care Facilities Code.

* * * * *

(i)(1) Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, call 202-461-4902, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555).

(i) NFPA 99, Health Care Facilities Code, Including all Gas & Vacuum System Requirements, (2012 Edition).

(ii) NFPA 101, Life Safety Code (2012 edition).

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PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

6. The authority citation for part 52 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

§ 52.200 [Amended]

7. Amend § 52.200(a) by removing “NFPA 101, Life Safety Code, 2000 edition” and add in its place “NFPA 101, Life Safety Code (2012 edition)”.

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF
STATE HOMES

8. The authority citation for part 59 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137.

9. Amend § 59.130 by revising paragraph (d)(1) and adding paragraph (i) to read as follows:

§ 59.130 General requirements for all State home facilities.

* * * * *

(d)(1) State homes must meet the applicable provisions of NFPA 101, Life Safety Code, except that the NFPA requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until February 24, 2016 for “existing buildings” with nursing home facilities as of June 25, 2001 (paragraph 3.3.36.5 in the NFPA 101 defines an “[e]xisting [b]uilding” as “[a]

building erected or officially authorized prior to the effective date of the adoption of this edition of the Code by the agency or jurisdiction”), and NFPA 99, Health Care Facilities Code.

* * * * *

(i)(1) Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials, incorporated by reference, are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, call 202-461-4902, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

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(2) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

(i) NFPA 99, Health Care Facilities Code, Including all Gas & Vacuum System Requirements, (2012 Edition).

(ii) NFPA 101, Life Safety Code (2012 edition).

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